United Nations

AT

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 973

Case No. 987: KHALIL

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Mayer Gabay, Vice-President, presiding; Mr. Chittharanjan Felix Amerasinghe; Ms. Marsha A. Echols;

Whereas, on 26 May 1999, Mohammed Haj Khalil, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), filed an application that did not fulfill all the formal requirements of article 7 of the rules of the Tribunal;

Whereas, on 3 July 1999, the Applicant, after making the necessary corrections, again filed an application in which he requested, in accordance with article 11 of the Statute of the Tribunal, the revision of Judgement No. 903, rendered by the Tribunal on 20 November 1998;

Whereas the application contained pleas which read, in part, as follows:

> "My plea and request to UNAT is to accept my claim that my real Date of Birth (DOB) is 11 November 1937 (and not 1936) as my claim is supported by authentic and genuine official (Government and U.N.) documents, where the Respondent (UNRWA) does not have one single document, original or photocopy, to prove otherwise. Hence, I ask UNAT to

revise its Judgement No. 903 (...). The main reason behind the Respondent's rejection of the Joint Appeals Board's (JAB) recommendation, which was in my favour, was that the appeal was not receivable (...). But the JAB received my application and so did UNAT. The Respondent could not produce any genuine document to prove its claim and could not prove that the information in the Personnel files, regarding my DOB, was certified.

I feel that UNAT's analysis of the issue in its presentation of the facts and decision to receive the case (...) as explained in the introduction and stating the facts, do not concur nor go in harmony with the final decision and judgement.

..."

Whereas the Respondent filed his answer on 19 December 1999;

Whereas the facts in the case were set forth in Judgement No. 903.

Whereas the Applicant's principal contentions are:

1. Additional supporting documents submitted to the Tribunal by the Applicant justify reconsideration of the case and revision of the original decision rejecting the Applicant's claim.

2. The evidence used by the Commissioner-General for his refusal to change the Applicant's birth date in the Agency's records was neither reliable nor authentic.

Whereas the Respondent's principal contentions are:

1. The application does not fulfil the preliminary requirements of an application for revision under article 11 of the Statute of the Tribunal.

2. The Applicant has not made any submission which could lead the Tribunal to conclude that a previously unknown new or decisive fact exists warranting a rehearing of the Applicant's case.

The Tribunal, having deliberated from 24 October to 17 November 2000, now pronounces the following judgement:

I. This is an application for the review of Judgement No. 903 rendered on 20 November 1998. After carefully examining the facts, the Tribunal determined in that case that the Applicant's date of birth was 11 November 1936 and not 1937 as contended by the Applicant.

II. Article 10.2 of the Tribunal's Statute provides that: "Subject to the provisions of article 11, the judgements of the Tribunal shall be final and without appeal".

Judgements rendered by the Tribunal can only be reopened by theTribunal in specific instances.

III. Article 11 of the Tribunal's Statute provides that:

> "The Secretary-General or the applicant may apply to the Tribunal for a revision of a judgement on the basis of the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence. The application must be made within thirty days of the discovery of the fact and within one year of the date of the judgement. Clerical or arithmetical mistakes in judgements, or error arising therein from any accidental slip or omission, may at any time be corrected by the Tribunal either of its own motion or on the application of any of the parties."

This article sets forth the conditions for the exercise of the Tribunal's power of revision. The provisions of this article are limiting in respect of review but do not impliedly deprive the Tribunal of certain inherent powers it has in any case, unless the written law governing the Tribunal's jurisdiction expressly takes away those powers. The inherent powers of the Tribunal relate to instances such as when an interpretation of a judgement (see Judgement No. 949, *Afawubo* (2000), paragraph II) or rectification in a judgement of a clerical error is requested or when there has been fraud or corruption in connection with the judgement. The first part of article 11 defines the Tribunal's powers of revision beyond these limited instances. In the case of this Tribunal, clearly those general jurisdictional

principles relating to revision have been limited by the first part of article 11. It is this part of article 11 that must be applied because this is not a case where interpretation of a judgement or rectification of a clerical error is requested or fraud or corruption in connection with the judgement is alleged.

IV. Thus, in this case the power of revision can only be exercised if the requirements of the first part of article 11 are satisfied. Moreover, the Tribunal in Judgement No. 303, *Panis* (1983), paragraph I, said of article 11:

> "That article enables the Secretary-General or the Applicant to 'apply to the Tribunal for a revision of a judgement on the basis of the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence ...' ... The standards contained in article 12 [now article 11] are accordingly relatively strict and lay a substantial burden upon a party who requests revision."

(See also Judgements No. 460, *Shatby* (1989); No. 894, *Mansour* (1998); No. 949, *Afawubo* (2000) and No. 950, *Abbas* (2000)). Consequently, no party may seek revision of a judgement merely because that party is dissatisfied with the decision of the Tribunal and wants to have a second round of litigation. (See Judgement No. 894, *Mansour*). Any claim for revision based on unacceptable reasoning, misinterpretation of the evidence, or alleged failure specifically to address a plea or to take into account facts produced in evidence, other than a claim based on the circumstances specified in article 11, would not be accepted by the Tribunal.

V. In this case, the Applicant does not identify any decisive fact which was discovered after Judgement No. 903 and which was unknown both to the Tribunal and "also to the party claiming revision". All the facts which are presented to the Tribunal were known to the Applicant at the time he filed his action in Judgement No. 903. The Jordanian passport issued in 1985, which contains the date claimed by the Applicant to be his true date of birth and which is different from the date determined by the Tribunal in Judgement No. 903, was in the possession of the Applicant at the time of his original application. Clearly he was aware of the date of birth in that passport at

that time. Under these circumstances, the Applicant has not presented a justification for an award for revision under article 11, even though the fact on which he bases his claim for revision might not have been presented to the Tribunal in the earlier case. The Tribunal's decision to choose the earlier date of birth rather than the later date was in fact based on the examination of evidence relating to both.

VI. The Tribunal, therefore, decides that there is no new fact presented in this case that is new and was unknown to the Applicant at the time he filed his application in Judgement No. 903.

VII. For the above reasons, the Tribunal rejects the Applicant's pleas in their entirety.

(Signatures)

Mayer GABAY
Vice-President, presiding

Chittharanjan Felix AMERASINGHE
Member

Marsha ECHOLS
Member

New York, 17 November 2000

Maritza STRUYVENBERG
Executive Secretary